AGENDA

CITY COUNCIL WORK SESSION

March 9, 2026

4:00 PM, City Council Chambers
427 Rio Grande Place, Aspen

CITY OF ASPEN

Zoom Meeting Instructions

Join from PC, Mac, iPad, or Android:
https://us06web.zoom.us/j/81764400894?pwd=ZOCRUHN54aOmz3ig8NrYDvfRlrBJZ7.1
Passcode:81611

Join via audio:
+1 346 248 7799
Webinar ID: 817 6440 0894
Passcode: 81611
International numbers available: https://us06web.zoom.us/u/kxgVZzqlV

I. Work Session

I.A Lumberyard Closing #1: Final Budget and Summary Documents
Mar 9 WS Memo Lumberyard Prep for Closing1 - final.pdf
Mar 9 WS Slides- Lumberyard Prep for Closing 1 - final.pdf

I.B Community Development
Status Update on Impactful Private Sector Development Projects
WorkSession 3_9_26_development projects.pdf

II. Council discussion of the items published in the most recent information update, as needed

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STAFF REPORT

TO:	Mayor and City Council
FROM:	Chris Everson, Affordable Housing Development Project Mgr.
THROUGH:	Rob Schober, Capital Asset Director
MEMO DATE:	March 2, 2026
MEETING DATE:	March 9, 2026
RE:	Preparation for Lumberyard Financial Closing #1

INTENDED OUTCOME: Council alignment on upcoming financial closing preparations.

EXECUTIVE SUMMARY: Since contracting with Gorman (Developer) in July 2025, Developer has completed an extensive and coordinated body of work to prepare for the first of two planned project closings.

Developer's current effort is focused on preparing for financial closing #1 which will include Building #1 (104 units) and related Phase 0 infrastructure scope. (Closing #2 is planned for 2027). At the March 24 regular meeting, Council will be asked to consider approval of a resolution which would approve the closing documents summarized herein, which will be attached to the March 24 resolution. The anticipated final budget for closing #1 is included below, although slight changes could occur prior to March 24.

The APCHA Board will be asked on March 18 to consider a resolution which would approve the Special Limited Partnership (SLP) Agreement summarized below, which will be attached to the March 18 resolution. Related to that matter, the APCHA Board is requesting addition of a lottery priority at the Lumberyard further described below.

Gorman plans to schedule closing #1 to occur in late March or early April with construction to begin soon thereafter.

DISCUSSION:

Anticipated Final Budget for Closing #1:

Below is a summary of the anticipated budget for closing #1. Although slight changes could occur prior to Council's regular meeting on March 24, material changes are not expected. The final budget will become fixed when Council approves closing documents, and the final budget will be recorded and memorialized at closing.

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2026 Closing #1 – Phases 0 and 1 (104 units)		2027 Closing #2 – Phases 2 and 3 (173 units)	
Estimated Sources		Estimated Sources	
• First Mortgage:	$ 15,700,000	• First Mortgage:	$TBD
• Equity:	$ 3,787,063	• Equity/Sub Debt:	$TBD
• City Phase 0 Funds:	$ 39,948,000	• City Phase 2 Funds:	$68,989,170
• City Phase 1 Funds:	$ 78,844,765	• City Phase 3 Funds:	$62,166,065
• Gorman Equity:	$ 3,266,100	• Gorman Funds:	$TBD
Est. Sources Total:	$141,545,928	Est. Sources Total:	$TBD
Estimated Uses		Estimated Uses	
• Design / Build:	$120,904,004	• Design Build:	$TBD
• Developer Costs:	$ 20,641,924	• Developer Costs:	$TBD
Est. Uses Total:	$141,545,928	Est. Uses Total:	$TBD

* Minor changes may occur by March 24

Introduction to Closing Documents:

The Lumberyard project is governed by a coordinated system of legal agreements that work together to protect the City's investment, ensure long-term affordability, and enable efficient delivery and operation of the affordable housing. Each document serves a distinct role within an integrated framework that combines public ownership, private development expertise, and permanent affordability protections.

The key documents in this system include the Deed Restriction, Ground Lease, Development Services Agreement, Operating Agreement, and Special Limited Partner (SLP) Addendum to the Operating Agreement. Each is described below, and these represent the primary documents for Council consideration; however, related ancillary agreements may also require approval and are currently being evaluated.

Deed Restriction – Summary

The Deed Restriction is a central and permanent protection of the City's investment, ensuring that all housing units remain affordable in accordance with the City's housing goals regardless of ownership changes or financial events. Recorded against the property and running with the land, the restriction binds all current and future owners, preserving long-term affordability for the community.

Critically, the Deed Restriction is structured to survive foreclosure, refinancing, sale, or transfer, ensuring that affordability protections remain fully enforceable even if lenders or new owners assume control. This protects the public investment and prevents the loss of affordable housing due to financial restructuring or ownership changes.

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The Deed Restriction grants enforcement authority to both the City of Aspen and the Aspen Pitkin County Housing Authority (APCHA), providing long-term public oversight and compliance monitoring. Together with the Ground Lease and ownership structure, the Deed Restriction ensures permanent affordability, protects public objectives, and secures the City's investment for future generations of Aspen's workforce.

Ground Lease – Summary

The Ground Lease preserves public ownership of the land while enabling development of critically needed affordable housing by an experienced developer. The City retains land ownership at all times, ensuring the land remains a permanent public asset. At lease expiration, all improvements including residential buildings automatically revert to ownership by the City.

The lease places responsibility for financing, construction, operations, maintenance, insurance, and property management on the developer, protecting the City from ongoing operational and financial obligations. The City retains inspection rights, enforcement authority, and the option to purchase the improvements prior to lease expiration, providing flexibility to assume full ownership earlier if desired.

This structure allows the City to leverage its land to deliver affordable housing while minimizing operational risk and preserving long-term ownership and control. While operations are managed by the developer, the City maintains strong asset protection through land ownership, regulatory oversight, and ultimate reversion of the buildings.

Operating Agreement – Summary

The Operating Agreement establishes a partnership that enables development and long-term operation of affordable housing on City-owned land while leveraging private sector expertise. This allows the City to deliver high-quality housing efficiently while relying on an experienced developer to manage operations, financing, compliance, and asset performance throughout the term of the Ground Lease.

The City participates as a capital partner and retains key oversight rights, including access to financial reporting and inspection authority. The partnership assigns operational responsibility and financial performance to the private partner, reducing administrative burden and limiting direct operational exposure for the City.

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Development Services Agreement – Summary

The Development Services Agreement engages Gorman & Company, LLC to lead delivery of the Lumberyard affordable housing project on land owned by the City, ensuring experienced professional oversight of design, permitting, contractor coordination, budgeting, and construction through project completion. The Developer is responsible for managing project schedules, controlling costs, coordinating lenders and contractors, and delivering completed housing units ready for occupancy. These responsibilities reduce execution risk and support efficient delivery of critical workforce housing.

The agreement establishes a fixed $5.9 million Developer fee for the first phase of the project, providing cost certainty, with a portion structured as equity to align the Developer's financial interests with the project's long-term performance. Overall, the agreement strengthens project delivery capacity while allowing the City to expand affordable housing without assuming direct development or construction management responsibilities.

Special Limited Partner (SLP) Addendum – Summary

The SLP Addendum admits APCHA as a Special Limited Partner in the project ownership structure, enabling the housing authority's tax-exempt status to materially strengthen the project's operating pro forma. As a Colorado housing authority, APCHA's participation allows the project to qualify for property tax exemption and certain sales tax benefits, significantly reducing annual operating expenses and improving long-term financial sustainability. These savings directly support deeper and more durable affordability while reducing financial pressure on rents and reserves.

APCHA's role is structured to provide these financial benefits without exposing it to financial liability or development risk. APCHA retains oversight rights, including access to project information and protections ensuring compliance with affordability requirements.

Overall, APCHA's participation enhances the project's financial viability, reduces operating costs, and strengthens the long-term affordability and stability of the housing, while preserving public-sector oversight aligned with the City's housing goals.
Together, the closing documents function as a comprehensive system that protects public interests, reduces financial risk to the City, and ensures the housing remains a permanent community asset.

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APCHA Board Request for Additional Lottery Priority

At the APCHA Board meeting on February 18, 2026, staff provided an update on the Lumberyard project and introduced the City's request that APCHA assume the Special Limited Partner (SLP) role described above. The Board responded positively, and staff plans to present a resolution for the Board's consideration at its next meeting on March 18, 2026 which would authorize the SLP Addendum.

During the discussion, the APCHA Board also requested consideration of a new lottery priority for the Lumberyard project. There was general agreement that, because City Council approval is required, Council guidance should inform a final decision on this request. Council direction is requested as described below.

The February 18, 2026, APCHA Board memo included the following discussion item:

> *"4. Priority for Lumberyard Units for an Owner to transfer to a Rental Unit*
>
> *APCHA Staff is proposing an owner transfer priority for Lumberyard rental units. Staff believe that we should limit the number of units to 10 for this priority. This might encourage movement from ownership units to rental units for downsizers."*

While the discussion item noted that this *"might encourage movement from ownership units to rental units for downsizers",* the original intent was meant to more broadly encourage transfers from *any* ownership unit – not solely in downsizing situations. The goal being to free up APCHA deed restricted ownership units where feasible.

Staff has identified several ways the requested additional priority could be applied:

1) **Do not offer a priority** – no lottery priority for owner-to-rental transfers
2) **Downsizing only** – Priority to go from ownership to rental with fewer bedrooms
3) **Like-for-like** – Priority to go from ownership to rental unit with same # of bedrooms
4) **Upsizing** – Priority for going from ownership to rental unit with more bedrooms
5) **Any owner-to-rental priority –** Priority to go from ownership to rental unit whether downsizing, like-for-like or upsizing

Historical data is limited. At Burlingame 3, offering a similar priority resulted in one downsizing transfer. While the frequency may be low, offering this priority could occasionally free up an ownership unit. Conversely, adding the priority could introduce complexity, though its rare application may mitigate this concern.

Noting that the owner-to-rental transfer applicants will likely be rare, staff suggests slotting this priority within the existing Lumberyard lottery priority hierarchy as shown below:

1. **Mobility Disabled for Type A accessible units & Emergency Workers all others**

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2. **Employee Partnership Program (EPP) and Owner-to-rental transfer**
3. **All Other Qualifying Applicants**

Staff encourages Council to discuss and provide direction whether this lottery priority can be accommodated and whether it should be for any owner-to-rental transfer regardless of number of bedrooms or for downsizing only, and finally, the placement within the priority hierarchy – also verification of a maximum of 10 units for this priority or other.

If Council provides such direction, staff will plan to present an additional resolution at the March 24 regular meeting – alongside the resolution to approve the closing documents – to formally establish the owner-to-rental transfer lottery priority.

Slight Deviations from Planned Development (PD) Plans

At the January 26 City Council work session, staff was asked to return with information about design modifications which Gorman is planning to implement.

The Lumberyard PD plan set includes the following note on each plan sheet:

> *"To implement the project, deviation of from the PD set could become necessary due to unforeseen conditions, code changes, material availability and technological advancement. In those cases,* ***slight deviation*** *is acceptable. Any changes should be done with a holistic understanding of how these designs and systems work together to accomplish project goals."*

In alignment with the flexibility allowed, Gorman has made the following slight deviations to the project elements included in closing #1:

- Reduced total gross floor area by 7%
- Reduced total net leasable area by 3%
- Optimized building 1 for double-loaded modular
- Squared corner of building 1
- Elevators in building 1 reduced from 4 to 2 to match all other buildings
- Refinements to unit plans with kitchen, closet, and storage improvements
- Reconfigured storage, maintenance, and support spaces in the subgrade garage
- Added roof over garage entry ramp for winter conditions
- Solar support structure integrated with balcony structural supports
- Enhanced unit demising walls for better sound insulation
- Relocated plumbing stacks
- Modifications to community plaza amenities
- Replaced sound walls with trees due to CDOT ROW rejection

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- Gabion and Corten site walls replaced with boulder and concrete walls

These slight deviations have been holistic with project goals and within the flexibility allowed while maintaining project budgets and building performance goals such as designing for 75% net energy offset and Enterprise Green Communities certification and are thus in alignment with holistic project goals as required in the PD.

Permit Status

At the January 26 work session, the project team outlined ongoing coordination to connect to the City electric grid. Gorman has since identified a feasible plan and requested a phased permit release, allowing most of the work to proceed on-site while switchgear location options are pursued. Option A would locate City Electric switchgear off-site. This is preferred by City Utilities staff and will be pursued by Gorman through June 1. If unsuccessful by June 1, Option B would locate the City Electric switchgear on-site, which is known to be feasible. Option B would be acceptable but is not the City Utilities staff preferred option.

Gorman's planned schedule is as follows:

March/April 2026	Financial Closing #1, includes Building 1 (104 units) and related Phase 0 infrastructure scope
April/May 2026	Mobilization and start construction of Phase 0 infrastructure
September 2026	Start construction of Building 1 (104 units)
May 2027	Financial Closing #2, includes Building 2 (91 units), Building 3 (82 units) and remaining related infrastructure
June 2027	Start construction of Building 2, Building 3 & related infrastructure
June 2028	Building 1 (104 units) complete and ready for lease-up
January 2029	Building 2 (91 units) complete and ready for lease-up
June 2029	Building 3 (82 units) complete and ready for lease-up

Remaining Steps to Financial Closing #1:

Aspen City Council:
- March 24: City Council Resolution to approve Closing #1 documents

APCHA Board:
- March 18: Board resolution to approve special limited partner agreement

Lumberyard Closing #1:
- March 30-31 or early April 2026, date tbd

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FINANCIAL IMPACTS:

To fund the project, the City has planned the annual project budgets shown below, and City Council has approved the 2026 budget:

2026	Cash available from the City 150 Housing Fund:	$110 million
2027	Funds further described below: • $70 million from issuance of debt via revenue bond • $25 million cash balance from the Housing Fund	$95 million
2028	Cash available from the City 150 Housing Fund:	$15 million
2029	Cash available from the City 150 Housing Fund:	$15 million
2030	Cash available from the City 150 Housing Fund:	$15 million
Total Estimated City Contribution		$250 million

ENVIRONMENTAL IMPACTS: The project is designed for 75% net energy offset and Enterprise Green Communities certification.

RECOMMENDATIONS: Staff recommends that Council ask questions and discuss to vet any concerns prior to March 24. Staff additionally recommends that Council consider the additional lottery priority request by the APCHA Board.

ALTERNATIVES: Included above

CITY MANAGER COMMENTS:

ATTACHMENTS: Exhibit A: Presentation slides

Exhibit A - Presentation Slides

Aspen Lumberyard Affordable Housing

Preparation for Financial Closing #1

CITY OF ASPEN

March 9, 2026

Agenda

- Gorman is preparing for financial closing #1.
- Closing #1 includes Building #1 (104 units) and Phase 0 infrastructure.
- Closing #1 is targeted for late March or early April.
- Construction will begin after Closing #1.
- Closing #2 is planned for 2027, for Building #2 and Building #3.

Today’s agenda:

- Summary Budget for Closing #1
- Summary of Closing Documents
- APCHA Board Request for Additional Priority
- Design Changes and Permit Status
- Next Steps

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Summary Budget for Closing #1

2026 Closing #1 – Phases 0 & 1 (104 units)

Estimated Sources

• First Mortgage:	$ 15,700,000
• Equity:	$ 3,787,063
• City Phase 0 Funds:	$ 39,948,000
• City Phase 1 Funds:	$ 78,844,765
• Gorman Equity:	$ 3,266,100
Est. Sources Total:	$141,545,928

Estimated Uses

• Design / Build:	$120,904,004
• Developer Costs:	$ 20,641,924
Est. Uses Total:	$141,545,928

* Minor changes may occur by March 24

2027 Closing #2 – Phases 2 and 3 (173 units)

Estimated Sources

• First Mortgage:	$TBD
• Equity/Sub Debt:	$TBD
• City Phase 2 Funds:	$68,989,170
• City Phase 3 Funds:	$62,166,065
• Other Funds:	$TBD
Est. Sources Total:	$TBD

Estimated Uses

• Design / Build:	$TBD
• Developer Costs:	$TBD
Est. Uses Total:	$TBD

*Closing #2 planned for Spring 2027

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Summary of Closing Documents

- <u>Coordinated system of legal agreements</u>

The Lumberyard project is governed by coordinated legal agreements that protect the City's investment, ensure long-term affordability, and enable efficient delivery and operation within an integrated public-private framework.

- Deed Restriction
- Ground Lease
- Operating Agreement
- Development Services Agreement
- Special Limited Partnership Addendum

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* Related ancillary documents may be needed but are not of major focus.

Summary of Closing Documents

<u>Deed Restriction</u>

- ✓ Permanent affordability
- ✓ Runs with the land
- ✓ Survives foreclosure
- ✓ Occupancy per APCHA Regulations
- ✓ APCHA and City Enforcement Rights

<u>Ground Lease</u>

- ✓ City retains land ownership
- ✓ City option to purchase improvements after 15 years
- ✓ 40-year initial term with optional 20-year extension
- ✓ Tenant responsible for operations, maintenance, and costs
- ✓ Improvements revert to the City of Aspen at lease end

<u>Operating Agreement</u>

- ✓ Establishes project ownership entity & governance
- ✓ Defines City and developer ownership interests
- ✓ City Member approval required for major structural actions
- ✓ Developer manages operations and property management
- ✓ Limits liability of the City of Aspen
- ✓ Governs distributions, reserves, and financial structure
- ✓ Ensures compliance with affordability and Ground Lease

<u>Development Services Agreement</u>

- ✓ Developer responsible for design and construction
- ✓ Establishes project scope, schedule, and budget
- ✓ Defines developer fee and payment terms
- ✓ Requires coordination with City approvals
- ✓ Assigns construction risk to developer
- ✓ Provides the City oversight and reporting rights

<u>Special Limited Partnership (SLP) Addendum</u>

- ✓ Admits APCHA as Special Limited Partner (0.01%)
- ✓ Enables property tax exemption, reduces operating costs
- ✓ Strengthens long-term operating proforma
- ✓ No day-to-day management required of APCHA

* Related ancillary documents may be needed but are not of major focus.

APCHA Board Request for Additional Priority

The APCHA Board is requesting a new lottery priority. Council guidance should inform a final decision on this request.

> ***"APCHA Staff is proposing an owner transfer priority for Lumberyard rental units. Staff believe that we should limit the number of units to 10 for this priority. This might encourage movement from ownership units to rental units for downsizers."***

The original intent was to broadly encourage transfers from *<u>any</u>* ownership unit – not solely in downsizing situations – to free up APCHA ownership units. Several options exist:

1. **Do not offer a priority –** no lottery priority for owner-to-rental transfers
2. **Downsizing only** – Priority to go from ownership to rental with fewer bedrooms
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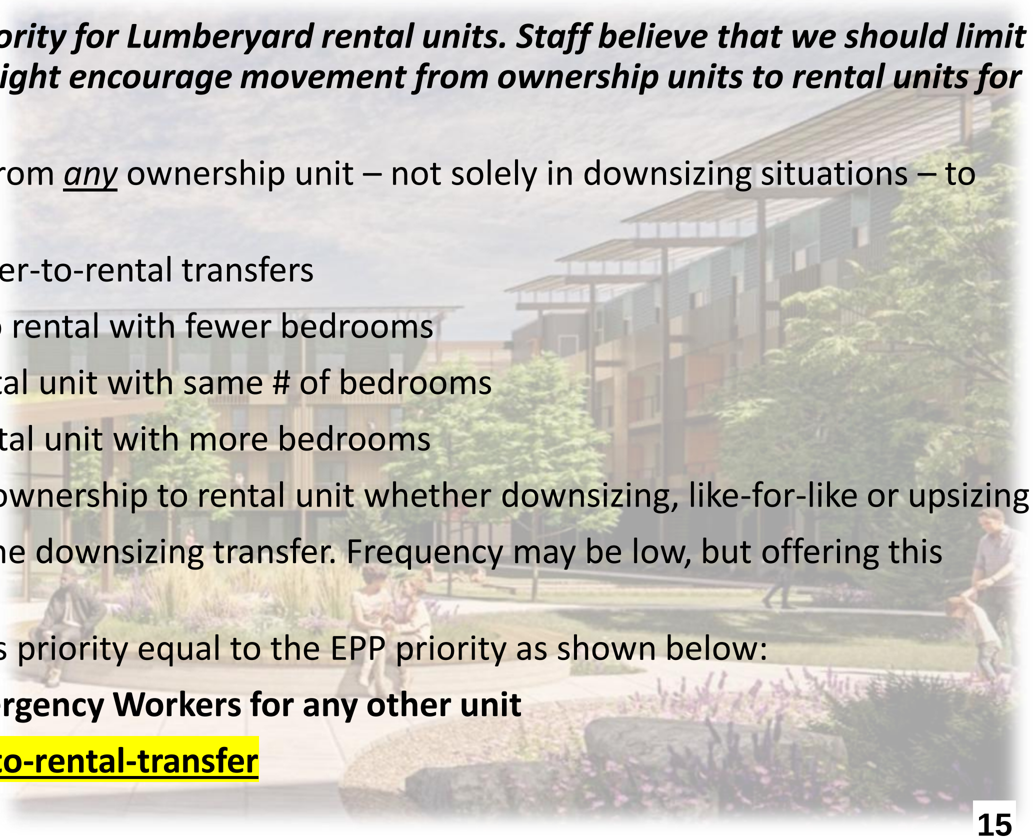
At Burlingame 3, offering a similar priority resulted in one downsizing transfer. Frequency may be low, but offering this priority could occasionally free up an ownership unit.

Due to very low frequency, staff suggestion is to slot this priority equal to the EPP priority as shown below:

1. **Mobility Disabled for Type A accessible units, Emergency Workers for any other unit**
2. **Employee Partnership Program (EPP) and <u>Owner-to-rental-transfer</u>**
3. **All Other Qualifying Applicants**



Slight Deviations from PD Plans

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In alignment with this, Gorman has made the following slight deviations:

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- Relocated plumbing stacks
- Modifications to community plaza amenities
- Replaced sounds walls with trees, CDOT ROW rejection
- Gabion/Corten site walls replaced with boulder/concrete

Permit Status

(Jan 26) *Outstanding Coordination: Connection to City of Aspen electric grid within easement areas at AABC.*

Update:

- Gorman has a known feasible plan
- Gorman has requested phased release of permit
- On-site work can be permitted (this is most of the work)
- Off-site work is deferred. Options being pursued:

    A) COA switchgear located off-site, preferred

    B) COA switchgear located on site

- Gorman will pursue Option A until successful or June 1, then Option B will be pursued.
- City Utilities staff prefer Option A
- Option B is known to be feasible

GORMAN & COMPANY

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1060 Bannock Street
Denver, CO 80204

02/16/2026

Atten: Architectural Plan Reviewer
City of Aspen
Community Planning & Development
Mailing Address: 427 Rio Grande Place, Aspen, CO 81611

Re: Aspen Lumberyard – Ph0/Infrastructure **0034-2024-BCOM**

We respectfully request approval of a phased Phase 0 Permit allowing all on-site Lumberyard Phase 0 improvements to be released and initiated immediately, while deferring the off-site work within the AABC200 Road right-of-way in Pitkin County; including the primary electric connection to the City of Aspen utility system and associated switch gear cabinet until the final switch gear location is confirmed. This request is necessary to maintain the project schedule.

Gorman & Company is targeting financial closing in early April, which requires final City Council approval scheduled for March 24. To preserve the schedule previously transmitted to Council, the Phase 0 permit must be ready for release in March. While a phased release was not previously contemplated, this structure allows all on-site infrastructure work to proceed while the switch gear location is finalized.

Two viable pathways have been identified for the primary electric connection:

Option 1 (COA Utilities' Preferred Configuration):

Install a new vault and City of Aspen switch gear cabinet at the east corner of AABC200 Road, potentially on Deer Hill Condominiums, Aspen Self Storage Warehouses, or the Annie Mitchell property. This option requires a new or amended easement, as locating the cabinet within existing easements has proven infeasible despite significant legal review. Gorman is proceeding in good faith to negotiate with property owners and anticipates up to three months may be required, potentially including financial consideration. If secured, a final design reflecting this configuration will be submitted.

Option 2 (Contingency / Last Resort):

If an acceptable easement has not been secured by June 1, after diligent and good faith efforts, the vault and switch gear cabinet will be located on the Lumberyard property. This alternative is more complex and costly, requiring two primary electric mains to traverse the length of AABC200 Road. These mains will require special roadway burial treatments, including potential vertical separation and protection with colored flowable fill. The two legs would then tie into the existing City underground vault at the east corner of AABC200 Road. Gorman is prepared to satisfy these technical requirements if necessary.

This phased permit approach mitigates schedule risk while ensuring the primary electric connection remains feasible under either scenario. It allows immediate commencement of on-site infrastructure work, protects the April financial closing, and provides a clear decision point and defined path forward for finalizing the switch gear location.

Please feel free to reach out to Alice Owen (aowen@gormanusa.com) or Kimball Crangle (kcrangle@gormanusa.com) with any questions or additional information needed.

Next Steps

<u>Remaining Steps to Financial Closing #1:</u>

- Aspen City Council:
  March 24 – City Council Resolution to approve Closing #1 documents
  & Revision to existing Resolution 160 of 2025 to update priorities

- APCHA Board:
  March 18 – APCHA Board Resolution to approve Special Limited Partner agreement

- Lumberyard Closing #1:
  March 30-31 or early April 2026, date tbd

Council Discussion

- Questions
- Discussion

Contact:

chris.everson@aspen.gov

CITY OF ASPEN

STAFF REPORT

TO: Mayor Richards and City Council

FROM: Ben Anderson, Community Development Director

MEETING DATE: March 9, 2026

SUBJECT: Work Session discussion;
Status update on impactful private sector development projects

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INTENDED OUTCOME: Through the City Manager, Mayor Richards requested an update from staff on the status of several impactful and visible in-progress development projects – and of properties that seem to be languishing but are anticipated for future development.

In this memo and the Work Session discussion, staff intends to:

1) Provide a specific update on each of these properties
2) Provide an understanding of some of the dynamics that have created the current conditions on these projects.
3) Explain the constraints within City regulations and common law property rights that limit a more active response to languishing projects/properties.

It is hoped that the discussion will provide Council (and the community) with a better understanding of the specific projects and the intersection of the projects with City regulations and basic property rights. Staff encourages ideas for alternatives that could be considered in response to the legitimate concerns about the varied impacts that these projects have had (and will continue to have) on the broader community and to the projects' more immediate neighbors.

SUMMARY OF PROJECTS: Staff shares Council's (and the community's) concerns about the number and scale of impactful projects that are not progressing towards completion in a timely and satisfactory manner. It has been a topic for several years and in spite of staff intention and effort to move approved projects forward, it is absolutely accurate that several of these projects are not following normal patterns or timelines of typical real estate development and redevelopment.

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The following projects/properties were identified in the Mayor's status request:

- 1450 Ute Avenue - Aspen Club and Spa
- 730 E. Cooper - Buckhorn Arms Building
- 500 W. Hopkins Ave. - Boomerang
- 404 Park Ave (Vacant Multifamily building)
- 420 - 434 E Cooper Ave. – Former Bidwell Building and Red Onion Building
- 300 E Hyman Ave. – Former Crystal Palace Building
- 710 and 810 S. Aspen Street – Lift One Corridor developments

While there are connections to be made between these projects, they need to be parsed out further. The first category are projects that are in-progress with active building permits. The second category are properties that are anticipated for future development but have not secured a building permit and are understood by the community to be eyesores, nuisances, and stalled. Lastly, in a very different category are the Lift One Corridor Projects that are actively working with staff to secure permits.

<u>Projects with Active Building Permits – that have been the subject of concerns over progress:</u>

<u>Aspen Club and Spa</u> – Originally permitted in 2014, this project has seen a few starts and stops as the project navigated bankruptcy proceedings and a change in project ownership. The project includes a new club building, market-rate residential, and on-site affordable housing. The new owners have pursued subsequent land use approvals for insubstantial changes to the originally approved project. Most recently, the project has been under review for a change order to the building permit. This should be issued imminently and as part of this most recent process, staff have been in regular contact with project contractors, architects, owners' representatives, and legal representation. In staff's view, this is encouraging evidence of a renewed commitment to the project and the desire to fully activate the construction site as we move toward Spring.

<u>Former Crystal Palace</u> – This has been a difficult and very impactful project to say the least and likely deserves a full memo to explain the path towards the current situation. In summary, this is a project that first gained a building permit in 2017, made progress, and then came to a halt for several reasons. A formal extension to the permit was granted in 2019. Subsequently a change order was submitted that required amended HPC approvals. Staff is additionally waiting on the applicant to submit an interior finish permit for the space.

Former Bidwell Building – The permit was first issued in 2020. Core/shell work completed on the Red Onion side. Three tenant finishes have been completed including two retail spaces and the JAS venue. No permit has been submitted for the interior finish of the Red Onion restaurant space. Work is nearing completion on the 434 Cooper core/shell permit (former Bidwell Building), and it is hoped that construction encroachment activity will soon be removed/reduced from the right-of-way. A permit has been issued and work is in progress for the interior finish that will include retail and restaurant space.

Properties that are in a dilapidated state but are anticipated to see redevelopment in the future:

404 Park Ave – This property received development entitlements for a 28-unit deed-restricted affordable, multi-family housing project by a previous owner. The previous owner pursued a building permit based on these approvals that was ready to issue. The project has been vacant for more than five years. City of Aspen staff check to make sure that the project is not posing health/safety risk – but acknowledge that it could not be more of an eye sore for the neighborhood and we have received numerous complaints from neighbors. ComDev leadership has had several conversations with the current property owner encouraging the demolition of the existing structure, to no avail. The project as previously approved, could be initiated on a very short timeline with the materials that staff has from the previous permit submission. However, staff has recently prepared an updated PreApplication Summary for a new affordable housing project. It is unclear how much of a departure from previous approvals a new project would represent.

Former Boomerang – This is another property with a history that should be granted its own memo. Most recently, Historic Preservation staff and the Chief Building Official pursued a Demolition by Neglect finding. In response, the applicant has better secured the site and has taken actions to prevent further degradation of the remaining preserved structure of the former lodge. Staff regularly visit the site to ensure this outcome. Currently the property does not have valid land use approvals or a building permit. Over the last several years, staff have completed PreApplication summaries for proposals – but have not received any formal application. The fate of this property, other than the preservation of the remaining structure of the former lodge, remains uncertain. However, staff did just receive (February 23rd) a request from the property owner for a PreApplication summary for a new proposal.

Base Lodge (Buckhorn Arms Building) – This building sits at the east entrance to Aspen's downtown and has received considerable community comment about its physical condition since the commercial tenants were vacated more than three years ago. The existing building is in very poor shape. Similar to 404 Park, ComDev leadership has on several occasions encouraged demolition of this building with the property owner as the project review continued. A building permit has been in review since 2020. There have been several changes to the original approval for this lodge and commercial building. Permit issuance is imminent.

Lift One Corridor Projects

While both reviews for the two primary projects are complex and have been challenging for both applicants and staff, the projects are progressing toward permit issuance. One comment of note is that both projects are pursuing "phased permits." This means that the projects submitted a comprehensive application, but the reviews and eventual permit issuance acknowledge the different stages of a project during construction. Staff have spent a considerable amount of time setting up the phased process and believe that it will translate into better timelines toward issuance and the timing of phases during construction.

It should be noted and emphasized that no further permit issuance will happen until a formalized construction sequencing agreement, executed by all parties, is submitted by the stakeholders and approved by Community Development and the City Attorney. This agreement is a requirement of both projects' approvals and was intended to provide the community and other stakeholders (including the City) with more certainty on construction timelines – with the goal of reducing the amount time that this side of the mountain is without ski lift service. Assuming that this agreement is reached, ComDev has been working toward issuance of Phase 1 of Lift One Lodge by the end of March. This phase would include grading, relocation of the Skiers' Chalet Lodge and Steakhouse, and excavation, shoring and foundation work related to the Lift One Lodge structure.

In staff's view, these projects are of a fundamentally different category than the projects identified above.

DISCUSSION: Community Development, on behalf of the City's comprehensive development review function, fully acknowledges and shares the community's frustration with the status and impacts of several of these projects. Staff have diligently applied our codes during land use and permit review. We have responded to and reviewed numerous change orders to issued building permits and the need for amendments to land use approvals for proposed project changes. We have navigated our building codes in assessing the appropriateness of requests for extensions to building permits and evaluated the types of completed and inspected work that allows for building permits to remain active.

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In all of these efforts, staff have been focused on trying to keep these projects moving forward. We have been compliant and consistent with our local regulations, our internal policies, and the provisions of ICC building codes, but when we had discretion – staff were directed by the goal of getting these projects to completion and made choices that we thought were best in achieving this outcome. Some in the community have been critical of these choices and have commented that the City is letting these projects off the hook in some way. Here is the language from the IBC that has guided much of staff's formal response to these issues:

> **105.5 Expiration.**
>
> Every *permit* issued shall become invalid unless the work on the site authorized by such *permit* is commenced within 180 days after its issuance, or if the work authorized on the site by such *permit* is suspended or abandoned for a period of 180 days after the time the work is commenced. The *building official* is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

<u>What are some of the causes of the languishing projects?</u>

Staff is hesitant to make any concrete determinations about why projects languish but can offer some general observations about these projects on private property. What is clear is that in Aspen, this dynamic happens more frequently and leads to timelines toward completion that are more severe. In most other development contexts, the desire for cash flow or revenue from a completed project drives construction timelines that are typically completed as quickly as possible. Here, it seems there are many other considerations and potential paths toward positive returns on investment. These are some of the causes, in staff's view:

1) <u>Speculative land use approvals</u>. Land use approvals can be sought to get an entitlement associated with a property well ahead of any actual construction timelines that are planned for the property or ahead of a particular use or tenant being identified. This dynamic is exacerbated by Aspen's complex and frequently amended land use code and heavily conditioned site-specific approvals. In many cases, once an actual project is identified it translates to a need for amendments to land use approvals and the need for staff to navigate provisions in a new project proposal in the face of potentially impactful code changes that have subsequently been adopted. If these proposed changes to a project happen once construction has been initiated – it can also translate into the need for complex change orders to the permit.

2) Aspen's connection to national and global brands. If one connects the dots between the speculative dynamic described above and the commercial tenants that see value in Aspen, there are often expectations set or assumptions made by the brand that are not in alignment with the land use code or the property's site-specific approvals. Also, once a brand has been connected to a space or has intertwined themselves with the construction project, things can get halted or postponed due to internal dynamics at the brand or to macro-economic trends well outside of Aspen's control or influence.
3) Affordable Housing mitigation requirements. For a commercial redevelopment project, the mitigation requirements can be very significant. As a consequence, a developer may speculate in potential affordable housing projects to meet future mitigation requirements for specific commercial projects. When those commercial projects languish, so to do the AH projects that were associated. This is this situation at 404 Park and for another property on Main Street that has been vacant for several years and holds land use approvals for a small AH project.
4) Property tax consequences. In the scenarios described above and the resulting uncertainty that can result, developers are reluctant to demolish dilapidated structures and bring a property back to a blank slate. It is staff's understanding that if a developer were to do so – that there can be a seven-fold increase in property tax assessment for vacant properties than with a property with a structure – no matter how poor the condition. For a short period this may be ok, but if there is uncertainty about the eventual timeline on a project, a developer is likely resistant to demolition until they are more certain about what comes next.
5) The costs of development in Aspen. Whether for a full-redevelopment or simply a tenant finish of an existing space – the costs of development and therefore the risks of development can be extremely high. No matter the resources of those involved, it seems that there is very careful consideration (perhaps hesitancy) in fully committing to a concept or project. This seems particularly true if there is any uncertainty about who the specific tenant will be or if an anticipated tenant backs out of a project.
6) Tax codes and Aspen's real estate values. This dynamic is complex and mechanizations of this are not fully understood by staff, but it seems clear that some in the development world have been able to find gains and sufficient value in letting properties languish – either before construction begins or during.

7) Aspen's Land Use Code and Site-Specific Approvals are not designed to be nimble. Aspen had other community interests in mind when establishing the foundation of the town's development review. Being nimble in response to the constantly changing dynamics described in this memo was not a primary consideration.

Is there anything that the community, Council, Community Development, or other departments in the City can do in response to this difficult and impactful problem?

As stated previously, this dynamic is incredibly frustrating to staff. It is clear that this is a primary concern of the community and of City Council – and has been for several years now. Staff has been previously asked to investigate possibilities in response – with both Community Development and the City Attorney engaged in inquiry. While not a statement of resignation to the issue, the primary obstacle to City intervention is the intersection of statutory and common law vesting and fundamental private property rights once land use approvals or building permits have been issued. Staff has considered numerous possible mechanisms of response but have not identified a path that to staff's evaluation would have any meaningful impact and be legal and practical for the City to apply.

The following responses have been suggested by members of the public, Council, and staff inquiry over the last several years:

1) Completion Bonds – the idea that the City could utilize some type of completion bond for large commercial products has been a commonly suggested idea. Staff has not been able to identify any community that has this as a requirement for projects on private property. More typically, completion bonds are requirements for infrastructure projects where the government jurisdiction is pursuing speedy completion in support of community needs. Playing this out, if the City were to require a completion bond of private sector projects on private property and the project languished, what would the City do with the money. Would we complete the project on someone else's property?
2) Commercial vacancy tax/fee – While a vacancy tax has been implemented in a few places for residential properties, staff is only aware of the program in San Francisco that has tried to respond to vacancies in commercial buildings. In staff's research, this has not translated into tangible outcomes – and has been instead tied up in litigation as to the legality of the system. The idea behind this tax is to make up for lost sales tax revenue for commercial spaces that are not producing sales tax revenue due to vacancy or languishing construction projects.

3) Impose significantly higher temporary encroachment fees. City of Aspen's encroachment fees for construction activity in the right-of-way are already very high. For example, the encroachment related to access and construction staging for the former Crystal Palace building is nearly $330,000 per year. Perhaps this could be restructured to create further incentive or disincentive, but in staff's view, fees even when significant, do not change behavior in Aspen's context.
4) Expire building permits/Vacate land use approvals. This effort would be problematic under state and common law unless the languishing project did not meet requirements for keeping a building permit active. As discussed previously, even in cases where this might be appropriate, would this translate into better outcomes for the community? Expiring a permit would in, in staff's view translate in even longer timelines toward a project's completion.
5) Reduce vesting periods granted by project approvals. First, the typical vesting is three years and is consistent with Colorado state minimums established by statute. Longer timelines can be granted, as can extensions, but once granted, vesting does not necessarily carry the significance that some assume it does. The expiration of vesting does not terminate project approvals – it only opens the project up to any new code amendments that have come into existence since the project's initial approval. And once the statutory vesting (3-year period) has expired, as long as a project is actively pursuing a building permit or has made progress on construction, the project's common law vesting remains intact.
6) Set fixed construction timelines as part of a project's approval. Staff's understanding of this again runs into private property rights amid application of standard building codes and statutory and common law vesting. And again, if found to be possible from a legal perspective, would the penalties associated with a construction timeline requirement translate into an improved outcome in Aspen's development context?
7) Engage in condemnation or eminent domain. This would be new tactic for Aspen to engage in and one that has a questionable path to meaningfully moving the needle on development timelines. If the City were to take control of one or more of these properties after a forced, but fully compensated transfer of ownership, would the City continue the construction project? Would we turn it over to another developer and to what community purpose?

CONCLUSION: Staff shares general community sentiment that the issues surrounding these stalled projects are deeply concerning. Staff wishes that there were options in our existing tool kit of regulatory responses that could be utilized to change this confounding dynamic. Staff would certainly be willing to explore other ideas in response that have not yet been identified or understood. However, in the tools that staff knows about and in considering the legal protections that exist for private property rights, there are not clear pathways for a City of Aspen response that would change the direction of this situation in a meaningful way.

Staff will continue to be responsive within our review processes and will follow our Land Use and Building Codes in navigating these projects. Staff will continue to work with project owners and design teams to encourage progress towards completion. Lastly, staff is certainly willing to explore any ideas that have not yet been identified as potential solutions or responses to this confounding dynamic.

CITY MANAGER COMMENTS: